

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1989-012631

09/05/2013

HON. ROSA MROZ

CLERK OF THE COURT  
J. Matlack  
Deputy

STATE OF ARIZONA

VINCE H IMBORDINO

v.

DEBRA JEAN MILKE (A)

MICHAEL D KIMERER  
LORI L VOEPEL

CAPITAL CASE MANAGER  
D & C MATERIALS-CSC  
PSA - RELEASE & REPORTS

UNDER ADVISEMENT RULING

The Court has considered the Defendant's Motion to Set Bond, the State's Response, the Defendant's Reply, the exhibits submitted, and the arguments of counsel.

The Defendant's son was murdered on December 2, 1989. In 1990, a jury convicted the Defendant of that murder. On March 14, 2013, the Ninth Circuit Court of Appeals overturned the Defendant's conviction based on the prosecution's *Brady* violation in failing to disclose impeachment evidence related to (now retired) Phoenix Police Detective Saldate. The Ninth Circuit opinion detailed Detective Saldate's various instances of misconduct, ranging from lying to internal affairs investigators and lying under oath, to violations of various defendants' Fourth and Fifth Amendment rights, and ruled that the information regarding these instances of misconduct were *Brady* material that should have been disclosed to the defense. *See Milke v. Ryan*, 711 F.3d. 998 (9<sup>th</sup> Cir. 2013).

After reviewing the exhibits submitted for the *Simpson* hearing, the Court agrees with the Ninth Circuit court's opinion that the only direct evidence linking the Defendant to the crimes is the Defendant's alleged confession to Saldate. Although the State would like the Court to focus

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1989-012631

09/05/2013

on the fact that the Defendant has already been convicted once by a jury and urged the Court to ignore the allegations against Saldate for the purposes of the *Simpson* hearing, the Court cannot do that. Much has transpired since the original trial. Back then, the jury did not have the benefit of the information against Saldate that the Ninth Circuit court ruled was *Brady* material. This Court also cannot simply ignore the Ninth Circuit court's opinion and all the information that this Court now has in its possession.

The *Brady* material casts serious doubts on the validity of the Defendant's alleged confession. The Court has not yet been able to weigh Saldate's credibility against the credibility of the Defendant in deciding whether the alleged confession is valid and admissible. That will be done at the suppression hearing set for September 23, 2013. In the meantime, this Court must decide the bond issue based on the totality of the existing information. The existing information does not make it "plain and clear to the understanding, and satisfaction, and apparent to the well-guarded, dispassionate judgment" of this Court that the Defendant committed the crimes. *See Simpson v. Owens*, 207 Ariz. 261, 272, ¶ 40 (App. 2004).

**THE COURT FINDS** that the proof is not evident or presumption great that the Defendant committed the crimes charged in the Indictment.

Accordingly,

**IT IS ORDERED** setting a secured bond in the amount of \$250,000.

**IT IS FURTHER ORDERED** that the Defendant shall comply with the following additional terms:

1. Once bond is posted, the Defendant is also subject to the supervision restrictions and conditions of the Pretrial Services Agency, including electronic monitoring program, which includes a curfew between the hours of 9 p.m. and 6 a.m.
2. The Defendant is not to initiate contact of any nature with Arizona Milke.
3. The Defendant is not to possess any weapons and is not to possess any drugs without a valid prescription.
4. The Defendant is not to drink alcoholic beverages and drive, or drive without a valid driver's license.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR 1989-012631

09/05/2013

5. The Defendant shall reside at the address listed on the Release Order form, unless written approval to change residence is obtained from Pretrial Services before moving.
6. The Defendant shall submit to DNA testing within 5 days of release from custody at the arresting agency. Failure to comply with this order will result in the Defendant's release being revoked.
7. The Defendant shall remain in Maricopa County, unless prior written approval is obtained from the Court.

**IT IS FURTHER ORDERED** that the Defendant's attorneys shall obtain the Release Order form from this division's judicial assistant and have the Defendant sign the Release Order **before** the Defendant may be released from custody. Once the Release Order is signed by the Defendant, the Release Order shall be returned to this division's judicial assistant within five (5) days.

**IT IS FURTHER ORDERED** that the signed Release Order shall be filed under seal to protect the Defendant's safety while in the community as the Release Order contains the Defendant's address.

**LET THE RECORD REFLECT** that State's supplemental exhibit received was marked and admitted as Exhibit 15; and the Defense's supplement exhibits received were marked and admitted as Exhibits 16 through 24.

FILED: Exhibit Worksheet.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.